IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 206 of 2000.

Date of Decision: 2-7-2007.

State of H P. Appellant.

Versus

Garib Dass and others. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent 1 & 2. : Shri Raman Sethi, Advocate.
For respondent 3 to 5: : Shri B.N. Gupta, Advocate vice Shri K.D. Sood, Advocate.

Surinder Singh, J . (oral)

The respondents were put up on trial before the learned Sub Divisional Judicial Magistrate, Nalagarh in Criminal case No. 42/2 of 1996 under Sections 379 read with Section 120-B of the Indian Penal Code and Section 33 and 42 of the Indian Forest Act. The learned trial Court had acquitted the respondents vide its detailed judgment passed on 26-11-1999 against which the instant appeal has been filed, on the ground that the reasoning's of the trial Court in acquitting the accused-respondents were manifestly unreasonable and unsustainable as there was no warrant at all for the trial court to discard the well reasoned and consistent testimony of prosecution witnesses on material points.

Leave to appeal was granted by this Court on 9.5.2000. Now the matter has been finally heard.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

Shri V.K. Verma, learned Additional Advocate General has vehemently argued that the learned trial Court has not appreciated the evidence of the prosecution in its right perspective, thus, it has resulted in mis-carriage of justice by acquitting the respondents.

On the other hand, Shri Raman Sethi Advocate for respondents No.1 and 3 and Shri B.N. Gupta, counsel for respondents No.3 to 5 have supported the impugned judgment and contended that there is not even an *iota* of evidence to connect the respondents with the alleged offences. I have given my thoughtful consideration to the contentions raised by both the parties and have legally scanned the evidence on record.

Succinctly, the case of the prosecution has been that on 15-12-1995, Shri R.K. Dogra (PW1) Range officer had received an information that some trees were illicitly felled in Chauraraia and Bhatian Shamlat in Tehsil Nalagarh. He visited the spot along with Harbans Lal and conducted inquiry from respondent Ram Singh in whose land the alleged illicitly felled trees were found stacked. It came to light that the said Shri Ram Singh had sold the trees to Shri Som Nath respondent out of which he felled only four trees from the private land and 26 khair trees from the shamlat land. The khair timber was seized by the Forest Officer and handed over to Shri Prithi Chand (PW5) on supurdari. On the basis of the complaint Exit. PW1/A, FIR Ext. PW11/A was formally registered. Shri Kishori Lal (PW11) investigating officer conducted the investigation and prepared the site plan Ext. PW11/A . He further took into possession the seized timber vide Ext. PW1/F and further handed over the case property to Shri Prithi Chand Forest Guard on supurdari after putting the seizure hammer 'KUN'. Axe Ext. P1 and Saw Ext. P2 were allegedly produced by Som Nath respondent. These articles were taken into possession vide memo Exhibit PW4/A. Fagu Ram (PW8) demarcated the area in question and submitted his demarcation report Exhibit PW8/A along with the tatima

Exhibit PW8/B & PW8/C accompanied by jamabandi Ext. PW8/D and PW8/F. On the basis of the demarcation, the result of the investigation was that five khair trees were allegedly cut from khasra number 1294, three from khasra number 2556/1296 and fourteen from khasra number 1300. After recording the statements of the witnesses, under Section 161 of the Code of Criminal Procedure, challan was finalized against the respondents and presented before the trial Court.

Finding a prima facie case under the aforesaid Sections, the respondents were charge-sheeted. They pleaded not guilty and claimed trial. The prosecution examined twelve witnesses to prove its case, the respondents were also examined under Section 313 of the Code of Criminal Procedure. Their case was of denial simplicitor. No defense evidence was led. The timber was not claimed by them.

After appreciating the evidence of the parties in the light of the arguments advanced by their respective counsel, the trial Court acquitted the respondents against which the instant appeal has been filed.

In order to find out whether the impugned judgment is legally and factually sustainable, I have re-appraised the evidence on record.

As a matter of fact, five trees of khair were alleged to have been found cut from khasra number 1294. The respondent Garib Dass has been recorded as “Chakotadar” over one portion of this khasra number. No tatima was prepared from which particular portion, the five trees of khair were cut. Further, three trees were found to have been cut from khasra number 2556/1296. Again in this khasra number Garib Dass aforesaid has been recorded in possession of 0.16 biswas of land as “Chakotadar” as per jamabandi for the year 1989-90 (Ex. PW8/D). Whereas, fourteen trees were alleged to have been cut from khasra number 1300 which is owned and possessed by the State Government adjacent to the land of respondent Ram Singh.

In order to pin-point the felling from the land owned by the State Government, the Police pressed into service Field Kanungo Shri Babu Ram (PW8) to demarcate the land. His report is Exhibit PW8/A. A perusal of the same does not indicate that he had demarcated the land in accordance with the instructions issued by the Financial Commissioner issued under Section 106 of the H.P. Land Revenue Act. There is no indication of the pucca points having been fixed by him and it is also not shown whether he was competent to conduct the demarcation. He has admitted Garib Dass respondent in possession of the land comprised in khasra number 1294 but according to him, there was no tatima made available to show what portion of this khasra number was in his possession.

In fact, Section 106 of the H.P. Land Revenue Act empowers the Financial Commissioner to make rules for demarcation of boundaries and erection of powers of the revenue officer to define boundaries of field or any portion of any other estate under Section 107 of the Act which otherwise is statutory function of a quasi-judicial nature of the Revenue Officer as held in ***Radha Soami Satsang Beas through Shri Madan Gopal v. State of H.P. and another ILR 1984 HP 317***. Since the function to demarcate the limits of any holding or field is a statutory function of a quasi-judicial nature, it is therefore, absolutely necessary for the Revenue Officer, while carrying out demarcation, to perform the function in accordance with the instructions and the guidelines which have been issued by the Financial Commissioner under the powers contained in Section 106 of the Act meticulously without any deviation there from, since it also affects valuable rights of the estate right holders. The report of demarcation on the face of it must show that all precautions which are required to be taken as per the instructions, aforesaid, were taken so as to enable the court, when the report comes before it to follow the method

adopted by the Revenue Officer while carrying out the demarcation and to find out that no mistake has been committed in doing so, so as to avoid the possibility of any error. Accordingly, the demarcating officer was required to relay the boundaries of the fields sought to be demarcated from the Shajra (village map) prepared during the last settlement. He is required to locate three permanent points on three different sides of the area sought to be demarcated.

In the instant case, the report aforesaid is absolutely contrary to the guidelines/instructions issued by the Financial Commissioner under Section 106 of the Act. Faced with this similar situation, the Divisional Bench of this Court in ***State –v- Mangat Ram and others (Criminal Appeal No. 125 and 126 of 1985 decided on 4.4.1997 1999 (2) C.L.R. 129***, also did not agree with the demarcation conducted by the Revenue Officer as it was contrary to the instructions aforesaid and acquitted the respondents.

Since the demarcation is the foundation of the case to connect the accused with the alleged offence, but it suffers from material illegality and irregularities and cannot be made basis to prove the case as alleged, therefore, in my considered opinion, the reasoning given by the trial Court to acquit the respondents while putting reliance on ***1992 (1) Sim.L.C. 339 State of H.P. –v- Joginder Singh, 1992 (2) (2) Sim. L.C. 307 Laxmi Nand and others –v- State of H.P., 1996 (2) Sim. L.C. 370 Hari Dass and others –v- State of H.P.*** is perfectly correct.

Once the demarcation report of the Revenue Officer, aforesaid, is taken out of consideration altogether, there remains nothing to connect the accused with the commission of alleged offence. The notification under Section 29 of the Forest Act, to attract the provisions of Section 30 of the Act was also not proved. There was no eye witness of the alleged incident. Circumstantial evidence is not of a conclusive character.

Therefore, in the totality of the circumstances, when the case entirely hinges upon the circumstantial evidence of a weak nature against the respondents and the prosecution has failed to prove that the felling of the trees was from the land owned and possessed by the State-appellant, the judgment of conviction of the respondents cannot be passed. Therefore, I concur with the findings arrived at by the trial Court in favour of the respondents which are based upon the evidence on record thus cannot be called perverse. Accordingly, the appeal is dismissed and the respondents are discharged of their bail bonds entered into by them during the proceedings of this case. Appeal is disposed of accordingly.

(Surinder Singh)
Judge.

July 2, 2007.
(bm)